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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Report of the Secretary-General

Addendum

Contribution by the United Nations Development Fund for Women

The attention of the Preparatory Committee is drawn to the attached report submitted by UNIFEM which reviews and assesses the progress made in the field of human rights as it relates to women. It focuses on the importance of including gender-specific issues on the agenda of the World Conference and argues for a redefinition of the concept of human rights. Based on its extensive experience in working with women in developing countries, UNIFEM believes that the realization of economic and social rights for women is inextricably linked to their realization of civil and political rights.

REPORT SUBMITTED BY THE UNITED NATIONS DEVELOPMENT FUND FOR WOMEN (UNIFEM) TO THE WORLD CONFERENCE ON HUMAN RIGHTS

EXECUTIVE SUMMARY

The 1993 United Nations World Conference on Human Rights will provide the U.N. with a unique opportunity to evaluate the work of the organisation in the field of human rights since the adoption of the Universal Declaration of Human Rights in 1948 and the 1968 Conference on Human Rights in Teheran. The Conference will be a forum to assess the effectiveness of the United Nations work in the field of human rights and the particular obstacles that it faces as well as to set targets for the future. During this assessment, it will be important to evaluate progress and obstacles in the implementation of the human rights instruments related to women.

Significant progress has been made since 1948 in the field of women's human rights through gender specific standard setting. The most important example is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the establishment a monitoring committee. Nonetheless, widespread violation of women's human rights continues to occur throughout the world. Various obstacles continue to limit women's enjoyment of the universal standards of human rights established in the UN Declaration of Human Rights. These include pervasive abuses such as gender based violence and those which arise out of specific contexts such as structural adjustment policies, misguided development policies, armed conflict and environmental degradation.

Within the legal framework of international human rights, universal and legally binding human rights are often not the rights centrally relevant to the majority of women's lives. For example, the definition of many rights excludes much of women's experience of violation. The traditional priority given to civil and political rights has marginalised the importance of economic, social and cultural rights which tend to have a more direct impact on the lives of women. International human rights law has focused on direct actions of the state itself or its officials. Yet, frequently, violations of women's rights occur at the hands of non state actors leading to the exclusion of women's concerns from the legal framework of human rights.

Mechanisms to defend women's human rights when compared with the general human rights institutions and procedures are weak. They have ineffective implementation processes and are often treated with less seriousness than other bodies within the human rights establishment.

The following are recommendations presented for achieving the targets of the Human Rights Conference:

* the United Nations should give priority consideration to a number of specific obstacles that women face in seeking to exercise their human rights. These include: violence against women in all its manifestations; the systematic use of sexual violence against women in situations of political instability; the negative effects of some development strategies, structural adjustment policies, and environmental degradation; the use of culture, religion and ethnicity to legitimize violations of women's human rights;

* all issues of human rights should be analyzed from a gender perspective making clear their particular impact on women;

* the mechanisms for the enforcement and monitoring of women's human rights should be strengthened. It is crucial that an effective individual and interstate complaints mechanism be established for the Women's Convention and for the women's rights to be guaranteed by the International Covenant on Economic, Social and Cultural Rights. Moreover, CSW and CEDAW must be strengthened and provided with adequate resources.

* the human rights establishment must become gender inclusive and training in gender awareness should be a formal requirement for United Nations experts, officers and all staff working in this area.

1. INTRODUCTION

The 1993 United Nations World Conference on Human Rights is the first major international conference on human rights in 25 years. The Conference, which is taking place against the backdrop of critical challenges for the world community, including political change, environmental catastrophe, armed conflict and growing global insecurity, will provide the United Nations with a unique opportunity to evaluate the work of the Organisation in the field of human rights since the adoption of the Universal Declaration of Human Rights in 1948 and since the 1968 Conference on Human Rights in Teheran.

The objectives of the World Conference on Human Rights, set out in General Assembly Resolution 45/155, call for an assessment of the progress that has been made in the field of human rights, the identification of obstacles to further progress, particularly in the context of development, and recommendations of ways in which such obstacles might be overcome. This evaluation will allow for an assessment of the effectiveness of the United Nations' work in the field of human rights and the particular obstacles and barriers that it faces as well as to set targets for the future.

This report is submitted by the United Nations Development Fund for Women (UNIFEM), a catalyst for women within the UN system which supports efforts of women in the developing world to achieve socio-economic development and equality. A priority for UNIFEM is to ensure that the concerns of women are featured as part of the mainstream debate at all levels and in all discussions of policy, both within and outside the United Nations. UNIFEM regards the achievement of its objectives a matter of human rights and social justice and considers that sustainable development will not be achieved unless women - more than half the world's population - are able to exercise economic, social, cultural, civil and political rights. The objectives of UNIFEM might appear to be concerned only with the realisation of economic, social and cultural rights, rather than with civil and political rights. However, UNIFEM views all human rights as indivisible and interdependent, and believes neither group of rights can be achieved without the realisation of the other. Moreover, only when women will enjoy the rights of all human beings and will be free from abuse that they will be able to participate fully in and benefit from development.

This report, accordingly, assesses the progress that has been made where women's human rights are concerned, identifies obstacles that have emerged and makes recommendations which might address these obstacles. The main thrust of the report is that while much progress has been made in standard setting, and procedures for the protection of women's human rights, empirical evidence clearly reveals that this progress has not been mirrored by concrete implementation of those standards. External factors, such as gender based violence, structural adjustment, debt, misguided development policies, environmental devastation and increasing armed conflict obstruct the efforts of women, particularly, in the developing world, to achieve socio-economic development and equality. Further, as this report demonstrates, the current legal framework of international human rights is also an important obstacle to the promotion and protection of the human rights of women.

2. PROGRESS IN THE FIELD OF HUMAN RIGHTS

Since the adoption of the Universal Declaration of Human Rights in 1948 and the 1968 Teheran Conference, an extensive body of international standards has been adopted and a wide range of institutions and procedures to monitor and secure their implementation have been established.

Standard setting for the protection of women's human rights began at the turn of the century, thus predating the United Nations, with international treaties referring primarily to protective concerns, predominantly around traffic in women[1] and employment protection.[2]

Some treaties concerned with the particular rights of women have also been developed since the establishment of the United Nations.[3] However, standard setting in this way has become uncommon because, from the foundation of the United Nations, all major treaties, although applying to men as well as women, have declared that sex is a forbidden ground of discrimination in the enjoyment of rights. The United Nations Charter, accordingly, subscribes to the concepts of human rights and fundamental freedoms for all, without distinction as "to race, sex, language or religion" and "equal rights of men and women", while Article 2 of the Universal Declaration of Human Rights, entitles all to "the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, national and social origin, birth and other status". Also, the twin Covenants, which enumerate the individual's economic, social, cultural, civil and political rights, mention explicitly the principle of non discrimination on the grounds of sex.

This principle of the equality of women and men and the prohibition of discrimination against women are elaborated in various treaties sponsored by the International Labour Organization, which include the 1951 Equal Remuneration Convention for Men and Women Workers for Work of Equal Value (No. 100), the 1958 Discrimination Employment and Occupation Convention (No. 111), the 1981 Workers with Family Responsibilities Convention (No 156), and the United Nations Educational, Scientific and Cultural Organisation Convention against Discrimination in Education adopted in 1960.

Standards set in the general treaties containing the guarantee of non discrimination on the basis of sex, and in those treaties which refer specifically to women, are brought together in the Convention on the Elimination of All Forms of Discrimination Against Women (The Women's Convention), drafted by the United Nations over a five year period and approved in 1979. The Women's Convention acknowledges in its preamble that despite the various United Nations efforts to promote the equality of rights of men and women "extensive discrimination against women continues to exist," and that such discrimination "violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity", thereby clearly establishing a link between equality between the sexes and human, national and global development. It then sets out programmatic measures for the achievement of equality between men and women, regardless of their marital status, in all fields of political, economic, social, cultural and civil life.

Unlike previous international treaties concerned with the position of women, the Women's Convention provides for temporary measures of affirmative action, seeks to modify cultural patterns of behaviour and attitudes regarding the sexes, and tries to impose standards of equality and non discrimination on the basis of gender in private, as well as public life.

A comprehensive set of **institutions** and **procedures** have been introduced since the foundation of the United Nations to monitor and secure the implementation of human rights standards which apply to both women and men and which are, therefore, accessible to both. These include the Commission on Human Rights, the various treaty bodies, such as the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee Against Torture, the Economic, Social and Cultural Rights Committee and the various special and thematic rapporteurs. Beyond these, special institutions and procedures have also been introduced to encourage the implementation of the human rights of women.

The oldest of these is the Commission on the Status of Women (CSW) which, since its establishment in 1946, has sought to define and implement the principles of equality and non discrimination on the basis of gender by submitting comments and suggestions to the Commission on Human Rights and the Economic and Social Council, preparing resolutions and drafting Declarations and Conventions, the most important of which has been the Women's Convention. The Commission also has the power to receive communications concerning the status of women. Other institutions which have been established to encourage implementation of the rights of women are the various working groups set up by the Human Rights SubCommission on the Prevention of Discrimination and Protection of Minorities, including the Working Group on Contemporary Forms of Slavery, which made specific reference to the concerns of women and the SubCommission's Special Rapporteur on traditional practices affecting the health of women and children.

The most influential mechanism for implementation of women's human rights has been the treaty body set up by the Women's Convention--the Committee on the Elimination of Discrimination Against Women (CEDAW). This Committee of 23 experts monitors the implementation of the Women's Convention by examining reports submitted by states parties in accordance with their obligations under the Convention. It has now met twelve times and has made valuable contributions to the elaboration of the meaning of equality and non discrimination on the basis of sex.

3. OBSTACLES TO PROGRESS IN WOMEN'S HUMAN RIGHTS PROTECTION

Notwithstanding these legal and procedural achievements, the discouraging fact remains that for a majority of the world's women, the enjoyment of legally enshrined human rights remains a distant dream.

Statistical data and empirical studies testify to the fact that women in all societies are subordinated, marginalised and oppressed in all facets of their lives. Women are the majority of the poor, they work the longest hours, they earn the lowest pay and receive the fewest benefits. In the South, they work 60-90 hours per week to maintain even minimal living standards. They are the main labour force for subsistence agriculture and other

essential activities in the informal sector, yet their work, income, and contributions to national economic growth are rarely reflected in the national accounts.

Further injustice is suffered by women within the family where pervasive discrimination often deprives them of adequate food and basic health care.[4] The most insidious and widespread violation of the human rights of women and girls is gender based violence in its various manifestations.[5] It is useful to examine these and other factors that contribute to limiting women's access to their full human rights in more detail:

* Women in all parts of the world continue to be at risk of **gender based violence**. This violence represents the ultimate form of discrimination against women and manifests itself in various forms including female foeticide, female infanticide, incest, domestic violence, sexual harassment in the workplace, and sexual assault. The particular forms of gender based violence are affected by the specific cultural, economic and historical settings in which they occur but such violence happens in all countries. Gender based violence attacks the dignity of women as human beings, leaves them vulnerable and fearful, leads to the marginalisation of women in society, forces them out of decision making processes and, accordingly, impedes the development process itself.

* **Misguided development visions and strategies**, concentrating on economic development and ignoring the importance of human development, have sometimes increased the victimisation of the world's most disadvantaged groups, which inevitably include women. Many projects funded by international financial institutions and bilateral assistance have resulted in involuntary resettlement[6] and the expropriation of land used for subsistence farming, which has had a disproportionately negative impact on women who are the majority of the world's farmers. Many development policies disregard human rights objectives and ignore the importance of women in all aspects of the process, failing to ensure that women share equitably in the achievements of development.

* **Structural adjustment and stabilisation policies** initiated by the International Monetary Fund, the World Bank and other financial institutions, have served to exacerbate preexisting inequalities experienced by women of the South. Many programs concentrated on support for projects in areas of production dominated by men, ignoring the subsistence sector where most of women's labour is performed. Further, the reduction of public expenditure in health, education and other social programs, has had a disproportionately negative effect on women and girls. It has directly affected them as consumers and indirectly increased their burden as traditional health care providers within the family and the community.[7]

* Not only are women the majority of the poor, they are the majority of the starving and of the rapidly increasing population of **refugee and internally displaced persons**. In international armed conflicts and civil war, women are at disproportionate risk of rape and other sexual abuse.[8] Political, economic and civil upheavals and transition stages to new social arrangements, as well as international and civil war are increasingly contexts in which women are subjected to numerous forms of human rights abuse.

* Women in many parts of the world continue to be denied **basic levels of health**. This constitutes a denial of human rights in itself and also serves as a substantial check on human, social and economic progress. Challenges to the health of women arise particularly in the context of women's reproductive role. Only one third of the world's women have any access to contraceptive information or devices and more than one half have no access to trained help during pregnancy and childbirth. Female children, women with disabilities, and elderly women are frequently discriminated against in health services and women are not guaranteed access to protective measures against contracting AIDS. Female ill health, much of it related to reproduction and much of it preventable remains, therefore, an important obstacle to women's ability to participate in development and to exercise their human rights.

* **Environmental degradation and devastation** have increased the daily burdens of poor women in the developing world, forcing them to walk further for fuel and water and degrading their subsistence farming land.[9] If the environmental challenge is not considered and met, the likely adverse consequences for poor women and their families in the South will be even greater poverty and suffering.

* Violations of women's rights are often justified by **culture, religion and ethnicity**. This has meant that clear violations of guarantees of all forms of rights--political, civil, economic, social and cultural--are frequently not categorised as rights abuses at all, but rather treated as part as part of a culture, religion or the customs of an ethnic group. Such violations then become invisible and, accordingly, are not redressed. This denies women access to the rights guaranteed by the Universal Declaration of Human Rights and points to the importance for women of ensuring the universality of basic human rights.

The **current legal framework of international human rights** serves as an obstacle to women because its definition of universal human rights has not adequately taken into account these and other realities in most women's lives. Many of the issues of immediate and central concern to the protection of women's right to life and dignity have not been defined as issues of human rights.[10] Accordingly, the dominant human rights institutions and bodies have not generally addressed women's particular concerns as human rights. Further, the current human rights framework, cast as it is in terms of individual rights, offers little redress where there is pervasive and structural denial of rights, which is often the case where women are concerned.

4. INTERNATIONAL LEGAL PROTECTION OF WOMEN'S HUMAN RIGHTS

International human rights instruments guaranteeing the individual basic rights emerged out of a political discourse in which women, by and large confined to the domestic sphere, played an insignificant role. Nonetheless, since the United Nations Charter all major human rights instruments have prohibited discrimination on the basis of sex.

The United Nations Charter and human rights treaties which contain guarantees of equality or non discrimination do not, in general terms, create rights for women that are specific to them as women, but offer them the opportunity to exercise rights on the same basis as men which are universally recognized and inherent in all people because of their common

humanity. Accordingly, these instruments envisage the human condition as "gender free" and, essentially, confer on women the right of being placed in the same situation as men in all those facets of life addressed by the particular treaty. The human condition, however, is not "gender free" or"gender equal." So, although there are some aspects of life which are common to women and men and where women seek the same rights as men, the human condition for women and men is often quite different.

In all societies, the bearing and suckling of children is the exclusive province of women, and in most, certain functions connected with the family are reserved for women.[11] Thus, women have near total responsibility for child and family care, household management and subsistence farming. The human condition for most women, accordingly, is to be a child bearer and carer, worker in the home or agriculture, for little or no remuneration and, increasingly, as a result of economic crisis, civil war, national disturbance or environmental catastrophe, in adverse conditions. The human condition for men, on the other hand, is very different. In general, most men live a far more "public" existence, where they work outside the home for remuneration and where their central concerns are, to a great extent, bound up with the assertion of civil, political, economic, social and cultural rights within the state.

Although women may be guaranteed the rights enumerated in the core human rights instruments on an equal basis with men, this has little meaning because these rights have been defined in relation to the lives of men which bears little relation to the lives of the majority of women. The reality of the lives of many women suggests that rights that women wish to assert are those to autonomy and equality within the family, to freedom from gender based violence, to conditions for healthy reproduction, to sufficient economic resources for themselves and their families and to shelter. Beyond these interests, most women wish to assert rights to a sustainable living environment, peace and, in the event of disaster, humanitarian aid. It might be asserted, thus, that a rights regime relevant to the majority of women is one which provides guarantees of social justice in private life and promotes the collective interests of humanity in a way that takes into account the particular perspectives of women.

The concept of human rights is, however, an elastic one, capable of expansion and redefinition to accommodate shifting needs. The question in this context, therefore, is whether the current human rights framework has the capacity to move beyond its gender biased stance to respond to the true concerns of women?

Examination of the workings of the dominant human rights institutions within the United Nations, reveals little evidence of redefinition and expansion of the concept of human rights to take account of the concerns of women. With the obvious exception of the Committee on the Elimination of Discrimination Against Women, there has been general failure to consider gender as an important dimension in defining the substantive content of human rights. This has meant that when rights are defined in gender neutral terms, and do not refer specifically to women, there is little recognition by the existing human rights mechanisms that a state's obligation to ensure equal enjoyment of the right by women may require measures which are different from those necessary to ensure that men enjoy that right.[12]

For example, the general comments of the Human Rights Committee, which represent the Committee's view of the content of rights guaranteed under the International Covenant on

Civil and Political Rights and steps that states parties should take to implement those rights, with the exception of the general comment on non discrimination,[13]suggest that the Committee is not sensitive to the fact that women are prevented from enjoying civil and political rights in ways that are different from men. In its general comment on the right to life,[14]for example, the Committee notes that this is a right which has been too often narrowly interpreted and indicates that it imposes on states parties requirements to adopt positive measures, including steps to reduce infant mortality and to increase life expectancy. Yet, the Committee makes no reference to the particular obstacles women face to the exercise of this right. No mention is made of gender based violence, widely acknowledged to be the greatest risk factor in a woman's life; of traditional practices such as female genital mutilation or dowry and bridewealth; of the failure of states to ensure reproductive health or discourage preference for male children which leads to selective abortion, female infanticide and discriminatory access to nutrition and health care.

Again, in its general comment on Article 14, guaranteeing the right to equal treatment before the law,[15]the Committee does not consider the distinct problems both female perpetrators and victims have within criminal justice systems which affect their exercise of this right. Similarly, the Committee's general comments on the right to bodily integrity[16] do not address either the fact that women face obstacles to the enjoyment of this right which are distinct from men or that positive measures to ensure women's equal exercise of this right may be different from those required to ensure men's enjoyment. Also, the General Comment of the Committee on Article 7 of the Covenant, which provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, while citing corporal punishment of children in private schools as meeting the definition of torture and degrading treatment, does not indicate that sexual abuse of women falls within the purview of the Article.

Likewise, the Committee Against Torture has also not considered the implications of gender in the context of torture and other forms of ill treatment. Consideration of recent reports by United Nations thematic and country rapporteurs, reveals that unless the brief to the rapporteur clearly raises the concerns of women--as is the case with the Special Rapporteur of the SubCommission on the Prevention of Discrimination and Protection of Minorities on traditional practices affecting the health of women and children and the Working Group on Contemporary Forms of Slavery and Slave Like Practices--the report will usually fail to canvass issues which impinge disproportionally on women. In other words, these reports, like human rights law generally subscribe to the view that the human condition is identical for men and women or "gender free". This is also evident in United Nations special studies. Thus, for example, two recent sales publications "The Right to Food as a Human Right"[17] and "Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief",[18]although concerned with subjects in which women are faced with singular difficulties, make only occasional reference to women or the gender specific issues that surround their subjects.[19]

Despite these examples, the interests of women have not been entirely ignored by human *rights mechanisms*. Attention has been given to women who have been the victims of violations of guaranteed rights enumerated in the core instruments and to women who have been denied such rights on the same basis as men. Women who have been tortured by state officials, women threatened with arbitrary deprivation of life, and women who have suffered

other violations of their civil and political rights have been given attention. So also have women who have been denied rights enumerated in human rights treaties on an equal basis with men. Thus, in its review of states parties reports, the Human Rights Committee has raised questions concerning sex discrimination and a number of communications under the First Optional Protocol to the International Covenant on Civil and Political Rights have related to discrimination on the basis of sex. In general, however, these communications have concerned women who have sought the same rights as men in what could be described as "public" areas of life: nationality and immigration law, social security law and legal personality. Particular contexts in which women suffer disproportionate violations of rights, such as forced prostitution, trafficking and traditional practices have attracted the attention of human rights bodies and resulted in the appointment of special working groups and rapporteurs.

In general, however, women have received attention not because they have been unable to exercise human rights particular to women, but because they have been unable to exercise rights which pertain to all individuals irrespective of sex or because they have been discriminated against in the exercise of guaranteed rights. **In other words, violations of women's rights have proved to be relevant only in those cases where men in the same position as the women concerned would have suffered the same violations or where women have not been able to exercise rights that men in the same position would have been able to enjoy.**

5. LIMITATIONS OF THE U.N. INSTITUTIONAL FRAMEWORK

There are several reasons why the United Nations institutional framework for the protection of human rights has failed to respond as adequately as it could where the human rights of women are concerned:

a. Male dominance within the human rights establishment

Overwhelmingly, except in the case of the CEDAW Committee, institutions currently charged with the task of implementing human rights standards are predominantly male. For example, most experts serving on treaty bodies are male, while few of the Human Rights Commission's many rapporteurs have been women. Male dominance in the implementation bodies is mirrored by male dominance in the United Nations, in general, and in the bureaucracy established to service the human rights institutions in particular. Thus, although over 40% of those employed in the United Nations are women, most of these are in low status clerical and secretarial positions and there are very few in senior posts. Indeed, despite the presence of Article 8 of the United Nations Charter which obliges the organisation to place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs, there is particular underrepresentation of women in senior posts. The importance of redressing this imbalance has been recognized by Secretary General Boutros Boutros-Ghali in his stated goal of achieving gender parity 50/50 by 1995 when the UN celebrates its 50th anniversary.

Training in gender awareness for all employees is crucial but it will not replace the perspectives that a more gender representative establishment would introduce. Just as the United Nations has appreciated the importance of accommodating the perspectives of various

regions and stages of development in its institutions, so it must appreciate the importance of gender balance. Until such a balance is achieved, the concept of human rights is likely to revolve predominantly around issues of central importance to men, and women's concerns will be secondary.

b. Institutional separation

The institutional structure of the United Nations has created a divide between those bodies charged with the elaboration of the framework and the protection of "human rights"on the one hand, and the Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women (CEDAW), the treaty body with the responsibility for supervising state compliance with the obligation to address discrimination between women and men, on the other.

As a consequence of this institutional separation of mechanisms to address women's concerns from those which address human rights, the human rights organs tend to avoid issues of concern to women by suggesting that CSW and CEDAW are the appropriate fora for the consideration of such issues. Other consequences of this separation include the lack of contact between mainstream non governmental human rights organizations and women's organizations.

Certainly, both the Commission on the Status of Women and CEDAW have made significant gains in the establishment of a human rights regime that is relevant to the majority of women. These gains are represented not only in various valuable conventions and declarations, culminating in the Women's Convention, but also in the elaboration by the CEDAW Committee, in its general recommendations, of the meaning of discrimination. Nevertheless, it is critical to the protection of women's human rights that gender perspectives and women's concerns be included in the ongoing work of the United Nations Human Rights organs and that mechanisms for better communications be developed between the women's and human rights bodies.

c. *Limitations of the Women's Convention*

Although invaluable, the Women's Convention, now ratified by 121 nations, in its own preamble testifies to the exclusion of women's rights from the vision of human rights and from its theory, jurisprudence and monitoring. There it draws attention to the core human rights conventions which promote the concept of equality of men and women and concludes: "Despite these various instruments, extensive discrimination against women continues to exist".

Further, the Women's Convention itself, like the other human rights instruments, does not define women's rights, nor does it enumerate rights which might be said to be particularly relevant to women. Rather, it establishes programmatic measures necessary for the elimination of discrimination between women and men, defining equality for women as reaching the same standard as men. Moreover, even in the Women's Convention, the rights enumerated, to which these measures are attached, are predominantly rights which men have been historically anxious to assert. Women are, thus, guaranteed equality and freedom from discrimination in political and public life, in citizenship and nationality, education, before the law, health care and in work. Some appreciation of the different world of women is, however, revealed in Article 5, which directs states parties to modify social and cultural patterns of behaviour based on the idea of the inferiority or superiority of the sexes and Article 16, pertaining to equality in the family. But, in general, the Women's Convention, like other human rights treaties, draws little distinction between the human condition of

women and men, ignores the fact that women and men often operate in different worlds and that the world of women and their role in it are undervalued.

Not only does the Women's Convention fail to enumerate distinct rights for women, but also the experience of the Convention has proven that its promise for women is more apparent than real. Thus, although the Women's Convention counts, by virtue of ratifications as one of the most popular of all international agreements, it has the distinction of being the treaty to which countries have entered the greatest number of substantive reservations. Indeed, some of these reservations strike at the heart of the concept of equality between men and women and thus to the very foundation of the instrument, thereby blatantly divesting women, not only of protections promised by the Women's Convention, but of other human rights instruments. Other reservations preserve states parties' power to allow discrimination in the context of the family, by preserving discriminatory laws, practices and patterns of behaviour and thus eliminate protection in the very sphere where rights for women are of central importance.

Certainly, the issue of reservations to the Women's Convention has attracted the concern of the CEDAW Committee, but at present there is no process for the rejection of reservations which are considered to be incompatible with the purposes of the Convention.[20] Further, the implementation procedure of the Women's Convention is confined to a supervisory treaty body, the CEDAW Committee, which monitors the states parties' reports on implementation of the Convention. The Committee has no real power to demand that recalcitrant states submit reports and has no mandate to sanction states who are in breach of the provisions of the treaty. The treaty contains no provisions for resolution of either interstate or individual complaints, issues of particular significance in the light of the fact that the communications procedure with respect to the Commission on the Status of Women has proven to be ineffective. The CEDAW Committee has no investigatory or enforcement powers and NGO's have no formal status or powers under its provisions. Again, although listed among the major human rights instruments, the Women's Convention is largely ignored by lawyers and political scientists developing the jurisprudence of human rights or absorbing human rights standards into national law. Finally, and importantly, the Women's Convention and the CEDAW Committee, like the Commission on the Status of Women, have been plagued since the outset by discriminatory resource allocation. Thus, the CEDAW Committee's meeting time has been shorter than any other comparable treaty body and provision for servicing the Committee has, in comparison with the other human rights bodies, been limited.

6. THE LIMITATIONS OF THE LEGAL FRAMEWORK FOR WOMEN

There are, however, more fundamental reasons why areas of particular concern to women have not featured as a central part of the general human rights discourse. These arise out of the doctrinal framework of international human rights law and concern three areas: first, substantive definition of legal rights and concepts in many international instruments exclude the central concerns of women; second, the traditional prominence given by human rights mechanisms, in particular, and the human rights establishment, in general, to civil and political rights has served to marginalise economic, social and cultural rights, which are of greater relevance to many women and third, the focus of the doctrinal framework of human rights analysis on direct state violations of individual rights excludes many violations of women's rights from the rubric of human rights.[21]

a. Definition of substantive human rights norms

Substantive definition of legal rights and concepts in varying international instruments, essentially reflect the life of a man in a world of men. Accordingly, much of women's experience of violation has been excluded from the rubric of human rights. A number of examples illustrate this.

The right to be free from torture is not only a norm of customary international law and recognized in all international lists of civil and political rights, but also the subject of a specialised United Nations treaty. There, the definition of torture is defined as acts "inflicted by or at the instigation of or with the consent of or acquiescence of a public official or other person acting in an official capacity", a definition which excludes many women's experience of torture. Certainly, a growing number of women are subject to torture instigated by or inflicted with the acquiescence of public officials.[22] The majority of women who are abused, however, experience victimisation at the hands of private individuals, often male members of their own families,[23]which is frequently, facilitated by the maintenance of a social, cultural or legal structure by the state which tolerates such victimisation. Thus, torture as defined currently fails to encompass, for example, violence in the family, which is trivialised in many legal systems and regarded by some states as culturally acceptable, or sexual assault, which many states fail to acknowledge as a serious issue, warranting legal and administrative action. The definition, further, excludes the growing incidence of apparently random, but very often, systematic, acts of violence directed at women in situations of economic, civil and political turmoil or during international and civil warfare.[24]

Again, the 1951 Convention Regarding the Status of Refugees defines a refugee as a person who is outside of, or unwilling to return to, that person's country "owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion". Many women claiming refugee status meet this definition, but it does not include women who claim refugee status because they fear harsh or inhuman treatment because they have transgressed their society's laws or customs with respect to the role of women. Further, women who flee their countries because of severe sexual discrimination either by official bodies or in local communities are not covered by this definition, which requires "persecution", while women who are the targets of military attacks may also find difficulty in showing that they are victims of persecution, rather than random violence. Indeed, even victims of sexual assault by the military or other officials have been

denied refugee status, on the basis that assaults of a sexual nature are matters of a private or individual nature, rather than a pattern of persecution.[25]

Similarly, the guarantees of civil and political rights and economic, social and cultural rights are framed to reflect men's, rather than, women's experience. The right to life, for example, part of international customary law and guaranteed in Article 6 of the Civil and Political Covenant, is concerned with the arbitrary deprivation of life by state action, including extrajudicial and judicial execution and genocide. As currently interpreted, it does not encompass disproportionate threats to women's lives arising from state tolerated gender based violence or state failure to ensure female reproductive health.[26] Also, the right of just and favorable conditions of work in Article 7 of the Economic, Social and Cultural Rights Covenant, with its guarantees of equal pay for equal work, safe and healthy working conditions, equal opportunity for promotion and paid leave is of limited application to work in the informal sector or in the home, where much of women's work is done.

b. Priority given to civil and political rights

Human rights discourse subscribes to the concept of indivisibility and interdependence of civil, political, economic, social and cultural rights and emphasizes the promotion and enjoyment of certain fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.[27] Traditionally, however, international human rights lawyers and philosophers, predominantly drawn from the West, have given primary attention to civil and political rights, both because the values embodied in such rights accorded with Western intellectual tradition and because these rights more easily lend themselves to precise legal regulation.

The universal realisation of civil and political rights is crucial, but the priority given to these rights has served to marginalise economic, social and cultural rights. This marginalisation has meant that issues of pressing concern to women in their daily lives, such as the impact of development policies or the effect of environmental degradation, which essentially involve the denial of economic, social or cultural rights have been disregarded. Further, the human rights establishment has failed to take into account the economic, social and cultural subordination which inhibits many women from claiming even their basic civil and political rights.

c. The notion of state responsibility

Human rights discourse has generally focussed on direct violations of the rights of individuals by the state. These arise either out of direct actions of the state itself or of its officials which violate the rights of individuals--such as torture, wrongful imprisonment and summary or arbitrary executions--or as a result of discrimination by the state or its agents where the exercise of established rights are concerned. While women also suffer violations of rights at the hands of the state in this direct fashion, in many cases these violations are different in kind or degree because of gender. Thus, for example, sexual violence is frequently used by state officials as a method of torture or by state actors as a method of warfare and female detainees are at disproportionate risk of gender based violence. Similarly, studies indicate that female refugees are exposed to a high risk of sexual and physical violence both during flight and on arrival in refugee camps.

Most violations of the rights of women occur, however, in other more private spheres of life and at the hands of private individuals. Domestic violence, sexual abuse of women in the workplace and elsewhere, trafficking in women and denial of reproductive choice are examples of violations to which women are commonly subjected. These are not directly attributable to the state, although in many contexts, states maintain a legal or social system which tolerates such violations or fails to take positive measures to prevent their occurrence. Also, discrimination perpetrated within the family is not considered a denial of a civil or political right and is not directly attributable to the state, although again, many states maintain a cultural context which legitimises such denial of rights.

In a growing number of situations, humanitarian and human rights law extends to violations by non state actors. Common Article 3 of the Geneva Conventions requires both non governmental and governmental forces to respect a set of minimum guarantees in conflict situations and an increasing number of treaties, including the 1979 United Nations Convention on the Rights of the Child, impose explicit duties on the state to prevent violations by private persons.

However, most human rights instruments do not include explicit duties, although many provide that a state must not only respect the rights enumerated in the treaty, but also "ensure" that they can be exercised. Decisions of the InterAmerican Court of Human Rights[28]and the European Court of Human Rights[29]indicate that in certain circumstances enumerated rights within human rights treaties impose positive obligations on contracting states to ensure effective enjoyment of rights, but there is little clarity in this area of the law.[30] Clearly the international community must expand the conception of human rights to encompass abuses by non state actors, at least in circumstances where state complicity and responsibility can be discerned, in order for the vision of human rights to meet the needs of most women.

7. RECOMMENDATIONS

While the framework of international human rights, thus, currently limits women's access to human rights, it is flexible and can be adapted to accommodate women's needs. Some measures that would lead in the direction of more effective protection of women's human rights include:

a. Priority themes

In its work on human rights, the United Nations should give priority consideration to the previously discussed obstacles to women's exercise of their human rights:

* violence against women in all its manifestations;
* misguided development visions and strategies;
* structural adjustment policies;
* violence against and displacement of women in situations of political, economic, and civil upheavals and in times of armed conflict;
* denial of health care and reproductive choice;
* environmental devastation;
* the use of culture, religion and ethnicity to deny women's human rights.

b. A gendered perspective on human rights

In the context of women, the work on the Draft Declaration on Violence Against Women indicates that rights which are closely related to women's lives are now being elaborated. It is encouraging to note that this Declaration appreciates that improvements in the status of women are not merely dependent on the elimination of discrimination in areas which have traditionally been seen as coming within the sphere of human rights, but also depend on conferring on women rights in areas which affect them particularly.

A wider spectrum of violations could come within the framework of human rights abuses if its definition were to move beyond strict ideas of state responsibility to examine the activities of non state actors, particularly in those contexts where the state maintains an economic, social, cultural and legal structure wherein such violations are tolerated. Such a shift of focus would accommodate, for example, claims by women that their human rights were violated where states failed to criminalise acts of domestic violence or failed to prosecute crimes against women perpetrated by family members.

Also, the vision of human rights might better accommodate the interests of women if the focus of the international human rights community moved beyond strictly civil and political rights to focus on economic, social and cultural rights and the so called "third generation" or collective rights.

A gender specific perspective is also important in the interpretation of the Covenant on Economic, Social and Cultural Rights, and was demonstrated by the Committee in its General Comment on the right to adequate housing, made in 1991,[31] which recognized women's particular needs in relation to this issue.

Much more work is required to incorporate the concerns of women into the formulation of the "third generation" or collective rights. The 1986 Declaration on the Right to Development, placed the human being in the centre of the development dynamic, but draws no distinction between the economic position of women and men and assumes that development policies will benefit women and men equally. Certainly, the right is formulated on the basis of non discrimination and in accordance with the values of equal opportunity and there is a provision requiring active measures to be undertaken to ensure that women have an active role and are equal beneficiaries in the development process. However, the background of the right is a definition of development which stresses economic growth and theories that suggest that underdevelopment is caused by lack of capital, technology and economic dependency. Little account is taken of the crucial role of women in development, the adverse effect many development strategies have had on women in the South and the unlikelihood of economic, let alone human development, in situations where women are subordinated and marginalised.[32]

Accordingly, although the elaboration of "third generation" rights appears to offer women international legal rights which are more appropriate for their needs, unless this elaboration takes account of the position of women and their perspectives, the promise these rights offer will remain unfulfilled. The right to development, must truly encompass a right to human development, taking into account the crucial role of women in country economies, the disparate and adverse impact of development policies on women and the particular obstacles in women's lives, which include lack of access to economic resources or information, gender based violence, lack of reproductive choice, illiteracy and lack of education.

In order to make the concept of human rights a vision which is truly relevant to women, it must be redefined and enlarged to take account of the gender component. Thus, for example, current human rights law and practice could seek to enlarge the conceptual analysis of well recognized rights, such as the rights to life, food, physical integrity and freedom from torture to encompass gender specific violations. The definition of war crimes must take account of specific violations against women, such as sexual violence in war. The definition of who can be granted asylum and refugee status must be reconsidered to include women fearful of gender discrimination in their country of origin. Any "index" or measure of states' compliance with human rights standards or "human development" should encompass an analysis of how far the rights of women are protected and promoted. Thus, any state which maintained a societal structure which tolerated or encouraged gender based violence would score less, although it might entitle its citizens to other well recognized civil and political rights.

c. Strengthening mechanisms for the enforcement and monitoring of women's human rights.

Incorporating gender perspectives into the definition of rights is crucial, but women's human rights must also be enforceable in some way. The enforcement of international human rights law, in general, is problematic, but the greatest difficulties in enforcement occur in the area of rights which might pertain to women. Certainly, if the violation meets the definition of "discrimination", the Human Rights Committee may have jurisdiction within the terms of its First Optional Protocol and, thus, individuals may seek redress. Accordingly, wide

interpretation of the meaning of "discrimination", so as to encompass women's concerns, is essential.

The Women's Convention has no enforcement mechanism beyond a reporting obligation and many states parties have failed to comply with this requirement. There is no provision for individual or interstate complaint. Similar treaties, such as the Convention on the Elimination on All Forms of Racial Discrimination, allow for individual petition, so an Optional Protocol, along the lines of the First Optional Protocol to the Covenant on Civil and Political Rights to provide a means of redress for victims of violations and an avenue for furthering interpretation and application of the Convention should be introduced.

Currently, there are no effective mechanisms for enforcement of economic, social and cultural rights and the developing "third generation" rights. Such would be essential in the provision of a proper rights regime for women. In this context, enforcement mechanisms that might be considered could include a complaints procedure under the International Covenant on Economic, Social and Cultural Rights. Moreover, new and innovative mechanisms should be explored. These could include, for example, special rapporteurs on specific rights which are of particular concern to women or issues which disproportionately affect them. Special rapporteurs on a variety of topics, including gender based discrimination, violence against women, trafficking in women and children, political participation of women, the use of culture, religion and ethnicity to legitimize violations of women's human rights should be seriously considered.

d. Strengthening CEDAW and CSW

It is essential that women's rights should become central in human rights discourse, but this is not to suggest that those bodies which are dedicated to women's rights should be dismantled. What is being suggested is that the human rights community should become more responsive to the difference in the human condition of women and men and interpret human rights and measures for their promotion and protection accordingly.

At the same time, the status of those fora specializing in issues concerning women should be raised. Urgent consideration of the wide number of substantive reservations to the Women's Convention is required, as are measures to reverse them. Time and resource allocation for the CEDAW Committee should be equal to that of the other treaty bodies, thus testifying to the importance of CEDAW within the human rights framework. Consideration should also be given to the introduction of sanctions for those states parties to CEDAW who fail to report, which might include the power to request reports from relevant NGO's.

Concrete, structured and formal measures should be introduced to ensure regular sharing of information between CEDAW and CSW and bodies such as the Human Rights Commission, the Human Rights Committee, the Committee on Racial Discrimination and the Committee on Torture, that are charged with promoting and protecting human rights in general. For example, the regular meetings of the Chairpersons of the treaty bodies should be institutionalized and strengthened. All treaty bodies, working groups, thematic rapporteurs and independent experts which have a role in the protection of human rights should be required to address issues of women's human rights that fall within their mandates. Specialised agencies of the United Nations and other branches of the Organisation whose

work bears on the implementation of women's human rights should be encouraged to contribute to the work of those fora dedicated to women's issues and those charged with the promotion and protection of human rights in general. In this context, measures should be formalized to facilitate this cross contribution.

e. Cross-sectoral and government/ NGO collaboration

Much of the work for the protection and promotion of human rights is based in collaboration between non governmental organizations and the United Nations and much of the progress on women's rights has been as a result of non governmental organisation activity. A gendered perspective on human rights is likely to be encouraged by cooperation between those NGO's whose primary concern has been with human rights and those mainly concerned with women's rights. Traditionally, human rights NGO's, like the human rights establishment in general, have paid little attention to the concerns of women, and women's organizations have little expertise in traditional human rights work. Non governmental organizations with expertise in the area of women's rights should have access to structures and activities relating to human rights and non governmental organizations with expertise in human rights should be encouraged to work with fora in the United Nations which relate to women. In particular, NGOs should be given a clear and formal role, provided for in the rules of procedure, in monitoring the implementation of CEDAW.

f. Gender balance within the human rights establishment

Only when more women are involved in the discourse and they represent the differing perspectives and realities of women globally will a fuller perception of the human rights vision emerge. Women should be, at least, equally represented on United Nations human rights bodies, including treaty committees and working groups. Women should be, equally represented in professional positions in the Human Rights Centre, UNHCR and other human rights organs and specialized agencies of the United Nations.

g. Training in gender issues

The personnel of United Nations human rights bodies, including treaty committees and working groups as well as officers in the United Nations should receive gender training. Manuals for action incorporating gender perspectives for such personnel should be developed and utilized and the effect of such training should be monitored regularly. Any human rights training carried out by the United Nations at international, regional and national level should include consideration of the gender dimensions of all human rights concerns and the work of CEDAW and CSW as mechanisms to promote guarantees of human rights for women.

The United Nations could also consider the preparation of a training manual from a gender perspective, to be used at the national level, which outlines means of accessing the United Nations human rights mechanisms and, drawing on developments in various national legal systems, explores the possibilities of using international human rights guarantees in the domestic context. This manual could be used internationally, regionally and nationally and would serve to acculturate judicial officers and lawyers generally to international standards which exist to advance the position of women.

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